

<sup>2</sup> Following the issuance of OWCP's May 18, 2017 decision, appellant submitted new evidence. The Board's jurisdiction is limited to evidence which was before OWCP at the time it issued its final decision. Thus, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On February 7, 2017 appellant, then a 52-year-old industrial equipment maintenance mechanic/welder/lifting inspector, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2017 he sustained upper back and left shoulder injuries as a result of repetitive use of his upper body during cutting and welding operations at work. He stopped work on the date of injury and returned to work on February 6, 2017.

Medical reports and invoices dated February 28 and March 1, 16, and 28, 2017 from Dr. Daniel A. Olson, an attending occupational medicine specialist, noted a history of injury that appellant developed left shoulder pain while performing repetitious and continuous work that involved welding and moving steel. He also noted a history of appellant's social and family background. Dr. Olson described examination findings and diagnosed work-related strain of muscle(s) and tendon(s) of the right shoulder rotator cuff, initial encounter. He listed appellant's physical restrictions and advised that appellant could return to modified-duty work from February 28 through March 13, 2017. Subsequently, Dr. Olson placed appellant off work on March 13, 2017 and advised that he could return to modified work from March 28 through April 18, 2017. In the March 1, 2017 invoice, he related that the objective findings were consistent with a history of a work-related etiology. In a March 13, 2017 medical referral form, Dr. Olson referred appellant for physical therapy treatment. He corrected his prior diagnosis of work-related strain of muscle(s) and tendon(s) of the right shoulder rotator cuff, initial encounter to reflect a diagnosis of work-related strain of muscle(s) and tendon(s) of the left shoulder rotator cuff, initial encounter. In a second March 13, 2017 referral form, Dr. Olson again referred appellant for physical therapy.

A March 16, 2017 report from a physical therapist addressed the treatment of appellant's left shoulder condition on that date. A January 31, 2017 laboratory report provided blood test results.

In a January 31, 2017 report, Dr. Trace C. Caton, an emergency medicine specialist, indicated that appellant complained about pain in his left upper back and left shoulder which appellant attributed to his work. Appellant's chief complaint was chest pain. He reported that he was welding on January 31, 2017 and he felt sudden pain in his upper back below the scapula. Dr. Caton noted a history of appellant's medical and social history. He discussed examination findings and diagnostic test results and reviewed laboratory test results. Dr. Caton diagnosed left upper back pain. He provided a secondary diagnosis of dyspnea.

In a February 28, 2017 medical referral form, a physician assistant referred appellant for physical therapy to treat his work-related bilateral shoulder strain.

OWCP, in an April 13, 2017 development letter, advised appellant that when his claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had since reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP requested that appellant submit additional factual and medical evidence to support his claim.

OWCP subsequently received an April 18, 2017 report in which Dr. Olson provided a history of his treatment of appellant. Dr. Olson noted that appellant presented with left shoulder pain from repetitive lifting and pushing. Appellant also had pain with impingement findings, but responded extremely well to therapy. Dr. Olson diagnosed left shoulder sprain and possible bursitis. He related that appellant's activity at work with overhead reaching, pushing, and welding contributed to his shoulder pain. Dr. Olson released appellant to return to full-duty work with no restrictions as of the date of his letter. In additional reports dated April 18, 2017 and an April 25, 2017 invoice, he reiterated appellant's history of injury. Dr. Olson described examination findings and diagnosed strain of muscle(s) and tendon(s) of the left shoulder rotator cuff, subsequent encounter. He again indicated that appellant was released to return to full-duty work with no restrictions as of April 18, 2017.

On April 25, 2017 appellant responded to OWCP's April 13, 2017 development questionnaire. He explained that while sitting at his welding table at work, he lifted his left arm to raise his hood and heard a pop and felt a stabbing pain in his left shoulder and down the left side of his back. Appellant noted that he had severe breathing difficulty caused by this incident. He reported his injury to his supervisor who brought him to a clinic for evaluation. Appellant was transported by ambulance to a medical center emergency room for further evaluation and treatment. He indicated that he had no similar disability or symptoms before his claimed injury. Appellant clarified that he was claiming a traumatic injury.

OWCP received a January 31, 2017 chest x-ray from Dr. David R. Abbott, a radiologist. Dr. Abbott provided an impression of mild streaky opacities within the lung bases favoring subsegmental atelectasis or hypoventilatory change, although mild basilar infiltrate would be difficult to exclude. He also provided an impression of no pneumothorax or pleural effusion. Dr. Abbott found the cardiac silhouette within normal size limits.

In a February 23, 2017 authorization for examination and/or treatment form (Form CA-16), the employing establishment authorized appellant's medical treatment. In the attending physician's report portion of the Form CA-16 completed on February 28, 2017, Dr. Olson indicated that the history of the employment injury provided by appellant was that pain developed gradually in his left shoulder. He reported findings and reiterated his prior diagnosis of left shoulder strain. Dr. Olson checked a box marked "Yes" indicating that the condition found was caused or aggravated by the described employment activity. He indicated that appellant could perform light work with restrictions.

In a February 28, 2017 report, Dr. Louis G. Arvanetes, a Board-certified radiologist, related that his x-ray of the bilateral acromioclavicular (AC) joints was not compared to another x-ray. He provided an impression that with and without weights, the distal clavicle and its association with the acromion did not change on either side. Dr. Arvanetes reported that no bony abnormality was appreciated. In another February 28, 2017 x-ray report, he advised that no acute bony or joint abnormality was evident. Dr. Arvanetes related that one could argue that there was some mild osteoarthritis about each AC joint and some evolving geode formation within the right humeral greater tubercle on the right and maybe a small bony island. The upper lungs were clear.

On April 6, 2017 a physical therapist noted a history of the claimed January 31, 2017 employment incident and described findings. She assessed appellant as having a left shoulder strain secondary to a work-related injury.

By decision dated May 18, 2017, OWCP denied appellant's traumatic injury claim as the medical evidence of record did not contain a rationalized opinion from a physician to establish a causal relationship between the diagnosed right shoulder condition and the accepted January 31, 2017 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.<sup>5</sup> There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The claimant's mere belief that the condition was caused or aggravated by the employment is insufficient to establish causal relationship.<sup>9</sup>

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish back and left shoulder conditions caused or aggravated by the accepted January 31, 2017 employment incident.

Appellant submitted a series of reports dated February 28 to April 25, 2017 from his attending physician, Dr. Olson. In these reports, Dr. Olson indicated that appellant developed left shoulder pain while performing work activity and diagnosed work-related shoulder and rotator cuff strains.<sup>10</sup> For example, in an April 18, 2017 report, he opined that appellant's work activity, which included overhead reaching, pushing, and welding, contributed to his diagnosed left shoulder sprain and possible bursitis. In a March 13, 2017 medical referral form, Dr. Olson diagnosed work-related strain of muscle(s) and tendon(s) of the left shoulder rotator cuff. He failed, however, to discuss the specific lifting incident on January 31, 2017 and address how it would have caused or contributed to the diagnosed conditions. A physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rational.<sup>11</sup> In a February 28, 2017 form report, Dr. Olson noted that appellant reported a gradual development of pain in his left shoulder. He provided findings and diagnosed left shoulder strain. Dr. Olson checked a box marked "Yes," indicating that the diagnosed condition was caused or aggravated by the described employment activity. However, a report that addresses causal relationship with a check mark, without medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.<sup>12</sup>

In reports dated April 18 and 25, 2017, Dr. Olson noted a history of the accepted January 31, 2017 employment incident, and provided findings, diagnoses, and appellant's work capacity. However, he did not offer an opinion on whether the accepted work incident caused or aggravated the diagnosed condition.<sup>13</sup> Dr. Olson's second referral form dated March 13, 2017 failed to mention the January 31, 2017 employment incident and also failed to provide an opinion on whether appellant's left shoulder strain was causally related to the January 31, 2017 work incident.<sup>14</sup>

Appellant also submitted Dr. Caton's January 31, 2017 report. Dr. Caton noted a history of the January 31, 2017 employment incident, discussed examination findings, and diagnosed left upper back pain and dyspnea. The Board has consistently held that pain is a symptom and

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<sup>10</sup> In some of these initial reports, Dr. Olson identified the right rather than the left shoulder in his diagnoses. On March 13, 2017 he corrected his error.

<sup>11</sup> See *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> See *D.B.*, Docket No. 16-0798 (issued December 2, 2016).

<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>14</sup> *Id.*

not a compensable medical diagnosis.<sup>15</sup> Moreover, Dr. Caton failed to offer an opinion addressing whether these conditions were caused or aggravated by the January 31, 2017 employment incident.<sup>16</sup> Thus, the Board finds that Dr. Caton's report is of diminished probative value.

Likewise, the diagnostic reports from Drs. Abbott and Arvanetes as well as the January 31, 2017 laboratory report are of diminished probative value. This evidence failed to provide a physician's opinion relating the diagnosed conditions to the accepted employment incident.<sup>17</sup>

The March 16 and April 6, 2017 reports from a physical therapist and February 28, 2017 report from a physician assistant found that appellant had a work-related bilateral shoulder condition. However, the Board has held that physical therapists and physician assistants are not considered physicians as defined under FECA.<sup>18</sup> As such, this evidence is also insufficient to meet appellant's burden of proof.

The Board finds that appellant has failed to submit rationalized, probative medical evidence sufficient to establish a back or left shoulder injury causally related to the accepted January 31, 2017 employment incident. Appellant, therefore, has not met his burden of proof.

On appeal appellant contends that he sustained a work-related left shoulder injury based on his physician's opinion. For the reasons set forth above, the Board finds that the weight of the medical evidence failed to establish back and left shoulder conditions causally related to the January 31, 2017 employment incident.

The Board notes that the employing establishment executed a Form CA-16 on February 23, 2017 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>19</sup> Although OWCP denied appellant's claim for an employment injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16.<sup>20</sup> Upon return of the case, OWCP should further address this matter.

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<sup>15</sup> *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

<sup>16</sup> *Supra* note 13.

<sup>17</sup> *Id.*

<sup>18</sup> 5 U.S.C. § 8101(2); *Sean O Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

<sup>19</sup> *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

<sup>20</sup> *L.D.*, Docket No. 16-1289 (issued December 8, 2016).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish back and left shoulder conditions causally related to the accepted January 31, 2017 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board